S.B.CIVIL WRIT PETITION NO.3714/2004

Likhma Ram
v.
State of Rajasthan & Ors.

DATE OF ORDER :: 14th February, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.K.Godara]
Mr. Papu Sangwa] for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

....

The appropriate Government under its notification dated 26.12.2001 referred an industrial dispute for its adjudication to the Labour Court, Jodhpur in following terms:-

> "क्या श्रमिक श्री लिखमाराम पुत्र श्री रतनाराम जाति जाट नि0 ग्राम साडीगण जिला नागौर वर्तमान में सहायक पद पर कार्यरत है को उनके नियोजक (1)राज. सरकार द्वारा सचिव, जन स्वा. अभि. विभाग सचिवालय, जयपुर (2)अधिशाषी अभियन्ता, जन स्वा. अभि. विभाग, नागौर (3)सहायक अभि. जन. स्वा. अभि. विभाग सब डिवीजन जायल जिला नागौर द्वारा संलग्न बकाया वेतन विवरण के अनुसार माह दिसम्बर 95 से अगस्त 97 तक बकाया वेतन आदि राशि का भुगतान नहीं किया जाना उचित एवं वैध है?यदि नहीं तो श्रमिक किस राहत एवं राशि को पाने का अधिकारी है?"

The Labour Court after adjudicating the dispute held that the respondents rightly not paid salary for the period from December, 1995 to August, 1997 to the petitioner by award impugned while

answering the reference made to it, hence this petition for writ is preferred.

It is contended by counsel for the petitioner that once his attendance was marked in the attendance register during the period concerned, he could not be treated absent from duties and, therefore,there was no occasion for the respondents for not making payment of wages of the period aforesaid without holding disciplinary proceedings.

Per contra, it is urged by counsel for the respondents while defending the award impugned that the petitioner entered his attendance in the attendance register though he was absent from duties and as such the pay was rightly not given to him for the period in question and the Labour Court also rightly accepted the stand of the department.

Heard counsel for the parties and examined the award impugned.

From the award impugned, it is manifest that in the attendance register presence of the petitioner was marked for the period in question. The respondents, if, were of the view that the petitioner marked his attendance without attending the duties, then they should have conducted an inquiry, as marking of attendance without attending duties itself is a

misconduct. It was not open for the respondents for not making payment of salary to the petitioner by treating the petitioner absent from duties without having a finding in this regard. The Labour Court has not considered this aspect of the matter, as such the award impugned suffers from an error apparent, that requires to be rectified by this Court.

Accordingly, this petition for writ is allowed. The award impugned dated 18.12.2003 is quashed. The respondents are directed to make the payment of wages to the petitioner for the period from the month of December, 1995 to August, 1997. It shall be open for the respondents to conduct disciplinary proceedings against the petitioner, if, they consider that the petitioner has marked his attendance in the register concerned for the period in question without attending the duties.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.